COMPARISON OF

PRESENT LAW, H.R. 3525 AS INTRODUCED, AND

H.R. 3525 AS REPORTED BY THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

Relating to the tax treatment of nonstatutory fringe benefits

Prepared by the staff of
The Joint Committee on Taxation

for use by the

Committee on Ways and Means

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INTRODUCTION

This document, prepared for use by the Committee on Ways and Means, provides a comparative description of present law, H.R. 3525 ("Permanent Tax Treatment of Fringe Benefits Act of 1983") as introduced, and H.R. 3525 as reported by the Subcommittee on Select Revenue Measures.

Item	Present law	H.R. 3525, as introduced	Subcommittee Modifications
A. Overview	Gross income, for income tax purposes, includes all income from whatever source derived. Certain fringe benefits, such as health benefits, are excluded from gross income by statute. Present law expiring on December 31, 1983, prohibits issuance of Treasury regulations relating to the income tax treatment of non-statutory fringe benefits. FICA and FUTA apply to "wages," which includes all remuneration from employment, generally including the cash value of all remuneration paid in any medium other than cash. Certain fringe benefits, similar to those excluded from gross income, are excluded from wages by statute.	A statutory exclusion from income tax, FICA, FUTA and RRTA would be provided for: (1) no additional cost services (2) qualified employee discounts (3) working condition fringes (4) de minimis fringes (5) recreational facilities, and (6) qualified tuition reductions. Amendments would be made to the rules excluding benefits paid under cafeteria plans.	

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B. No-additional cost-service		A service provided to an employee would be excluded if: (1) the employer incurs no substantial cost (including foregone revenue) in providing the service, (2) the service is provided by the employer, and is of the same type ordinarily sold to the public in the line of business in which the employee works, (3) the service is provided to a current or retired employee, or a spouse or child of either, and (4) nondiscrimination requirements are met (see H, below)	(2) the service also may be provided by another business with whom the employer has a written reciprocal agreement (e.g., between airlines) or by another business under common control with the employer, if the service is of the same type ordinarily sold to the public in the line of business in which the employee works (3) the service also could be provided to a widow(er) and children of a former employee

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C. Qualified Employee Discount		A discount on property or services provided to an employee would be excluded to the extent it does not exceed 20 percent of the selling price (or if lower, the percentage of sales which is gross profit), if:	A discount on property provided to the employee is excluded to the extent it does not exceed the gross profit percentage (with no percentage limitation). However, the exclusion does not apply to discounts on real property or on personal property of a kind commonly held for investment. A discount on services provided to the employee is excluded to the extent it does not exceed 20 percent of the selling price of the services (with no gross profit percentage restriction).
		(1) the property or service is provided by the employer and is of the same type ordinarily sold to the public in the line of business in which the employee works,	(1) the property or service also may be provided by a business under common control with the employer, if the property or service is of the same type ordinarily sold to the public in the line of business in which the employee works,
		(2) the property or service is provided to a current or retired employee, or a spouse or child of either, and (3) nondiscrimination requirements are met (see H, below) For purposes of (1), above, a department store and a leased section selling property would be treated as the same employer	(2) the property or service also may be provided to a widow(er) and children of a former employee

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D. Working Condition Fringe		Property or services are excluded if: (1) provided primarily for facilitating the employee's performance of service for the employer, and (2) substantially all the use is connected with the employee's performance of services An auto salesman's automobile use in the dealer's sales area is excluded if (1) is met and there are substantial restrictions on personal use Free parking is excluded if nondiscrimination requirements are met (see H, below)	Property or services provided to an employee are excluded to the extent that they would be deductible as ordinary and necessary business expenses (under Code secs. 162 or 167) if the employee had purchased them.
E. De Minimis Fringe		Property or services not otherwise tax-free are excluded if their value is so small, considered in the aggregate, as to make accounting for the benefits unreasonable or administratively impracticable.	Subsidized eating facilities also are excluded as a de minimis fringe if located on or near the premises, if revenue equals or exceeds operating costs, and if nondiscrimination requirements are met (see H, below)

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F. Recreational Facilities		An exclusion is proposed for the value of any on-premises recreational facility provided by an employer to its employees	An exclusion is allowed for the value of on-premises athletic facilities provided by the employer (or a commonly controlled entity)
	Employers generally may not deduct costs attributable to recreation, amusement or entertainment activities or facilities primarily for the benefit of officers, owners, or highly compensated employees	Employers could not deduct costs of the facility, other than interest, taxes, and costs up to income from the facility Employers could elect to deduct costs attributable to the facility, in which case the exclusion would not apply	The present law rules relating to deduction of the costs of recreational facilities (see first column) are retained without modification.
G. Qualified Tuition Reduction		A reduction in tuition provided to an employee of an educational institution would be excluded if: (1) the tuition is for education (below the graduate level) provided by the employer, (2) the education is provided to the employee or the employee's spouse or child, and (3) nondiscrimination requirements are met (see H, below)	(1) the education may be provided by another educational institution (2) the education also may be provided to the child or spouse of a retired or deceased employee

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H. Nondiscrimination Requirements		The exclusions for no-additional-cost services, qualified employee discounts, free parking, and qualified tuition reduction are available to employees only if the property or service is provided on substantially the same terms to each member of a group of employees defined under a reasonable classification, set up by the employer, which does not discriminate in favor of officers, owners, or highly compensated employees	If the requirements are not met, the exclusion still is available to all employees other than officers, owners, or highly compensated employees
I. Cafeteria Plans	Otherwise nontaxable benefits offered under a plan which offers a choice between taxable and nontaxable benefits ("cafeteria plan") are excluded from income only if certain conditions are met	A cafeteria plan could not offer taxable benefits other than cash, or nontaxable benefits other than benefits specifically excluded under the Code (except for scholarships, educational assistance, vanpooling, and the benefits described in sections B. - F. above)	Group-term life insurance which is taxable because the amount exceeds $50,000 also may be offered in a cafeteria plan

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J. Coordination with Other Fringe Benefit Exclusions	Various fringe benefits, such as day care and health benefits, are excluded from income if specific conditions are met	No fringe benefit (other than a de minimis fringe) would be excluded under the bill if another section of the Code provides rules for the tax treatment of that general type of benefit	
K. Effective Date		The bill generally would be effective on January 1, 1984, except that the tuition reduction provision would apply with respect to education furnished after June 30, 1984	